(26)

Office - Supreme Court, U. S.
FILED
JAN 4 1945
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court

OF THE

UNITED STATES

OCTOBER TERM, 1944

BOUNDARY COUNTY, IDAHO, a municipal corporation of the State of Idaho, by RAY SIMS, ROBERT H. HARTLING, and CHARLES SCHAUER, its County Commissioners,

Petitioners,

v.

MARTIN WOLDSON,

Respondent.

No. 812

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

W. J. NIXON,
Courthouse,
Bonners Ferry, Idaho

GEO. W. YOUNG,
502 Paulsen Bldg.,
Spokane, Washington

CLAUDE D. RANDALL,
Paulsen Bldg.,
Spokane, Washington,
Attorneys for Petitioner

WHITLA & KNUDSEN,
Coeur d'Alene, Idaho,
Attorneys for Respondent

SHAW & BORDEN CO. 262911

SUBJECT MATTER OF BRIEF

PAGE

Opinions Below ---------- 7

Statement of Ground on which Jurisdiction is Invoked ---------- 7

Statement of Case ---------- 8

Argument Briefly Summarized ---------- 10

Argument ---------- 11

Appendix ---------- 15

TABLE OF CASES

Boundary County v. Woldson, 49 Fed. Supp. 600, 144 Fed. (2d) 17 ---------- 3

Brown v. Leo, 12 F. (2d) 350 ---------- 12

Central Transp. Co. v. Pullman's Palace Car Co., 139 U. S. 24, 35 L. Ed. 55, 11 Sup. Ct. Rep. 478 ---------- 13

Cox, Ex Parte, 32 Pac. 197 ---------- 12

Davenport Dry Goods Co., In re, 9 F. (2d) 477 ---------- 11

Daviess County v. Dickinson, 117 U. S. 657, 29 L. Ed. 1026, 6 Sup. Ct. Rep. 897 ---------- 14

Dazet v. Landry, 21 Nev. 291, 30 Pac. 1064 ---------- 12

Fletcher v. Delaware L. & W. R. Co., 79 F. (2d) 306 ---------- 12

Fox v. Wright, 152 Cal. 59, 91 Pac. 1005 ---------- 12

Glover v. Brown, 184 Pac. 649 ---------- 12, 13

Heffner v. Ketchen, 296 Pac. 768 ---------- 11

Hunt v. City of St. Maries, 260 Pac. 155 ---------- 11

Jackson Equipment & Service Co. v. Dunlop, 172 Miss. 752, 160 So. 734 ---------- 13

Kivett v. Owyhee County, 74 Pac. (2d) 87 ---------- 8

Leslie County v. Keith, 227 Ky. 663, 13 S. W. (2d) 1012 ---------- 13

TABLE OF CASES—*Continued*

PAGE

Litchfield v. Ballou, 114 U. S. 190, 29 L. Ed. 132, 5 Sup. Ct. Rep. 820 ---- 13

McDonald v. Scott Co., 87 S. W. (2d) 1019 ---- 13

Merchants Trust Co. v. Wright, 161 Cal. 149, 118 Pac. 517 ---- 12

New Jersey v. Anderson, 203 U. S. 483, 51 L. Ed. 284 ---- 11

Paepeke v. Kirkman, 55 F. (2d) 814 ---- 12

Ray v. Frye, 119 P. (2d) 941 ---- 12

Richmond v. Bird, 249 U. S. 174, 63 L. Ed. 543 ---- 11

Scott v. Advance Romelly Thresher Co., 288 Fed. 739, 36 A. L. R. 938 ---- 14

Shawnee News Co. v. Board of County Com'rs, 173 Okl. 106, 46 P. (2d) 568 ---- 13

Smith v. City of Nampa, 68 P. (2d) 344 ---- 11

Thompson v. Goble, 71 P. (2d) 100 ---- 11

Vial v. Paradis, 255 Pac. 643, 53 A. L. R. 91 ---- 13

Western Paint & Chemical Co. v. Board of Co. Com'rs of Kingfisher Co., 172 Okl. 599, 46 P. (2d) 543 ---- 13

TEXTS

Blackwell on Tax Titles, Section 509 ---- 12

Freeman on Judgments, Section 116, p. 176 ---- 13

STATUTES

Section 30-708, I. C. A. ---- 8, 10, 11, 12, 16

Section 61-1009, I. C. A. ---- 15

Section 61-1025, I. C. A. ---- 15

Section 61-1032, I. C. A. ---- 11, 16

OPINION

District Judge C. C. Cavanah in Boundary Co. v. Woldson ---- 20

IN THE

Supreme Court

OF THE

UNITED STATES

OCTOBER TERM, 1944

BOUNDARY COUNTY, IDAHO, a municipal corporation of the State of Idaho, by RAY SIMS, ROBERT H. HARTLING, and CHARLES SCHAUER, its County Commissioners,

Petitioners,

v.

MARTIN WOLDSON,

Respondent.

No.------

PETITION FOR WRIT OF CERTIORARI

MAY IT PLEASE THE COURT, the petition of Boundary County, Idaho, respectfully shows to this Honorable Court:

STATEMENT OF MATTER INVOLVED

Boundary County is one of the counties of the State of Idaho. On the 15th day of August, 1938, in compliance with State statute the real property, title of which is here in question, was deeded to petitioner by its tax collector for delinquent taxes and drainage district assessments (R. 13). Martin Woldson, who is a citizen of the State of Washington, was the owner of the bonds of the drainage district.

On the 15th day of October, 1938, in compliance with State statute, the lands here involved were offered for sale at public auction for cash (R. 13), Woldson's was the only bid, the amount thereof being $72,143.96 (R. 95). His bid was rejected for the reason the amount thereof was insufficient (R. 96). Whereupon Woldson commenced an action in the State Court of Idaho for the purpose of compelling acceptance of his bid, which resulted in the entry of a final judgment and order for writ of mandate dated December 24, 1938, commanding the conveyance by petitioner of the property here involved to him upon payment of his bid either in cash *or its equivalent* (R. 52).

Woldson attempted to satisfy his bid by the payment to petitioner's treasurer of the sum of $22,811.33 in cash and $49,232.63 in bonds and interest coupons of the drainage district (R. 149). Thereafter and on the 30th day of December, 1938, the lands were deeded to him by the then commissioners of petitioner. On June 16, 1940, the commissioners of the drainage district demanded that your petitioner pay in cash and pro-rate into its various funds, its proportionate share of the $72,143.96 bid by Woldson (R. 15-17). Woldson was notified of this demand and requested to make good the remainder of his bid which had not theretofore been paid in cash but had illegally been attempted to be paid by bonds and interest coupons of the drainage district (R. 17-18). He refused to make good his bid, whereupon your petitioner commenced this action

against Woldson to compel payment in cash of his bid, or, in the alternative, that the deeds to the lands here in question be set aside (R. 2-7).

BASIS OF JURISDICTION

Jurisdiction is invoked under Section 240(A) of the Judicial Code as amended by the act of February 13, 1925, 43 St. Stat. 938.

The opinion of the Circuit Court of Appeals for the Ninth Circuit was filed August 8, 1944, and reported in 144F (2d) 17. Petition for re-hearing was filed on September 5, 1944, and denied on October 4, 1944 (R. 296).

QUESTIONS PRESENTED

The Honorable C. C. Cavanah, Judge of the United States District Court of Idaho, Northern Division, applying local law, decided that the sale to Woldson was void (R. 183) (appendix). He retired before making findings of fact, conclusions of law and entering judgment. The Honorable L. B. Schwellenbach was called in on assignment for the purpose of making findings of fact, conclusions of law and judgment in that case. He rendered an opinion reversing Judge Cavanah, *Boundary County v. Woldson,* 49 Fed. Supp. 600. The decision here sought to be reviewed sustains the decision of Judge Schwellenbach which gives rise to the following questions of law:

Is the decision here sought to be reviewed in conflict with State law controlling the subject matter of

the action as interpreted by the Supreme Court of the State of Idaho?

Can commissioners of a county which, by virtue of operation of State statutes, acquires land by reason of unpaid taxes and drainage assessments and thereafter, in conformity with State statutes, offer the land so acquired for sale at public auction for cash and receive a bid therefor, divest the county of title to a bidder who does not pay cash?

Is a judgment of a State Court which directs the acceptance of something other than cash in payment of a bid made at a tax sale held under statutes specifically requiring such payment to be made in cash, void on its face?

Is the judgment of a State Court not appealed from, directing the acceptance by county commissioners of something other than cash in payment of a bid made at public auction held under State statutes specifically requiring payment to be made in cash, immune to collateral attack in a subsequent action in the United States District Court between the same parties and involving the same subject matter?

Is a county whose commissioners have accepted something other than cash in payment of a bid made at public sale of lands in violation of State statutes specifically requiring payment thereof to be in cash, estopped by the conduct or acts of such commissioners and barred from repudiating the transaction?

REASON FOR GRANTING PETITION

The United States Circuit Court of Appeals for the Ninth Circuit has decided an important question of local law in conflict with applicable decisions of the Supreme Court of the State of Idaho.

WHEREFORE it is respectfully submitted that this petition for writ of certiorari to review the judgment of the Circuit Court of Appeals for the Ninth Circuit should be granted.

W. J. NIXON,
Bonners Ferry, Idaho

GEO. W. YOUNG,
Paulsen Bldg.,
Spokane, Washington

CLAUDE D. RANDALL,
Paulsen Bldg.,
Spokane, Washington,
Attorneys for Petitioner